

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

LENWOOD HAMILTON,

Plaintiff,

v.

**LESTER SPEIGHT, EPIC GAMES, INC.,
MICROSOFT, INC., MICROSOFT
STUDIOS, and THE COALITION,**

Defendants.

Case No. 2:17-cv-00169-AB

**MOTION TO DISMISS PLAINTIFF’S SECOND AMENDED COMPLAINT (Dkt. 33)
BY DEFENDANTS MICROSOFT, INC., MICROSOFT STUDIOS,
THE COALITION, EPIC GAMES, INC., AND LESTER SPEIGHT**

Pursuant to Fed. R. Civ. P. 12(b)(6), defendants Microsoft, Inc., Microsoft Studios, The Coalition¹, Epic Games, Inc., and Lester Speight (collectively, “Defendants”) respectfully move this Court for an order dismissing Plaintiff Lenwood Hamilton’s Second Amended Complaint (Dkt. 33) with prejudice.

Dismissal is proper for the following independently sufficient reasons. First, the First Amendment protects any alleged use of Hamilton’s identity. Second, Hamilton has not alleged sufficient facts to support a finding that the Defendants used his likeness or voice in the video games at issue. Third, Hamilton has otherwise failed to allege facts supporting the elements of his claims under the Pennsylvania right of publicity statute, the Lanham Act, and the common law. Finally, the doctrine of laches bars Hamilton’s claims.

¹ Microsoft Studios and The Coalition are trade names of Microsoft and its wholly owned subsidiaries, which Microsoft refers to in connection with this motion as “Microsoft.”

In support of this Motion, the Defendants respectfully refer this Court to the accompanying Memorandum of Law and the Declarations and exhibits filed at Dkt. Nos. 25-3 through 25-17.

Date: April 28, 2017

**HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER**

/s/ Bonnie M. Hoffman
William T. Hangley
Bonnie M. Hoffman
One Logan Square, 27th Floor
Philadelphia, PA 19103

Elizabeth A. McNamara (*pro hac vice*)
DAVIS WRIGHT TREMAINE LLP
1251 Avenue of the Americas, 21st Floor
New York, NY 10020

Ambika K. Doran (*pro hac vice*)
DAVIS WRIGHT TREMAINE LLP
1201 Third Avenue, Suite 2200
Seattle, WA 98101

Alison Schary (*pro hac vice*)
DAVIS WRIGHT TREMAINE LLP
1919 Pennsylvania Avenue NW, Suite 800
Washington, DC 20006

*Counsel for Defendants Microsoft, Inc.,
Microsoft Studios, The Coalition, and Lester
Speight*

**HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER**

/s/ Bonnie M. Hoffman
William T. Hangley
Bonnie M. Hoffman
One Logan Square, 27th Floor
Philadelphia, PA 19103

Robert C. Van Arnam (*pro hac vice*)
Andrew R. Shores (*pro hac vice*)
WILLIAMS MULLEN, P.C.
301 Fayetteville Street, Suite 1700
Raleigh, NC 27601

Counsel for Defendant Epic Games, Inc.